

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 15-2801(L), 15-2805(Con)

Caption [use short title]

Motion for: Leave to File Brief as Amicus Curiae in
Support of Appellees' Petition for Panel Rehearing
or Rehearing en Banc

National Football League Management Counsel v.
National Football League Players Association

Set forth below precise, complete statement of relief sought:

Leave to File Amicus Brief Pursuant to FRAP
Rule 29

MOVING PARTY: American Federation of Labor and Congress of Industrial Organizations

☐ Plaintiff

☐ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

MOVING ATTORNEY: James B. Coppess

[name of attorney, with firm, address, phone number and e-mail]

James B. Coppess

815 16th Street, N.W., Washington, D.C. 20006

202-637-5397

OPPOSING PARTY: National Football League

OPPOSING ATTORNEY: Paul Clement

Bancroft PLLC, Suite 700

500 New Jersey Avenue, N.W.

Washington, D.C. 20001

Court-Judge/Agency appealed from: United States District Court for the Southern District of New York, Judge Richard M. Berman

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ James B. Coppess

Date: May 31, 2016

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 15-2801 (L), 15-2805 (Con)

NATIONAL FOOTBALL LEAGUE MANAGEMENT COUNCIL,
Plaintiff-Counter-Defendant-Appellant,

and

NATIONAL FOOTBALL LEAGUE,
Defendant-Appellant,

v.

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, ON ITS OWN
BEHALF AND ON BEHALF OF TOM BRADY,
Defendant-Counter-Claimant-Appellee,

and

TOM BRADY,
Counter-Claimant-Appellee.

**UNOPPOSED MOTION OF AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE
BRIEF AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES' PETITION
FOR PANEL REHEARING OR REHEARING EN BANC**

Pursuant to Federal Rule of Civil Procedure 29(b), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) moves for leave to file the attached brief as *amicus curiae* in support of the Petition for Panel Rehearing or Rehearing En Banc of Appellees National Football League Players

Association and Tom Brady. All parties have consented to the filing of this brief *amicus curiae*.

I. Statement of Interest

The AFL-CIO is a federation of 57 national and international labor organizations representing approximately 12.2 million working men and women. Most collective bargaining agreements negotiated by AFL-CIO-affiliated unions contain arbitration provisions to resolve disputes over the meaning of the contract, including with regard to discipline. As a result, the AFL-CIO has extensive experience with the operation of arbitration procedures in the disciplinary setting and a significant interest in the application of the proper standard for judicial review of decisions rendered pursuant to arbitration procedures.

II. Reasons Why The Proposed *Amicus* Brief Is Desirable and the Matters Asserted Are Relevant

This case concerns the Court's review of a decision by NFL Commissioner Roger Goodell rejecting the appeal by the National Football League Players Association of discipline issued to player Tom Brady. The panel majority subjected that decision to the highly deferential judicial review ordinarily extended to decisions of neutral arbitrators. The proposed *amicus* brief is desirable because it provides a clear explanation to the Court of the lack of procedural fairness in the underlying decision. A review of the substance of the Commissioner's decision makes clear that, in hearing the appeal, the Commissioner was acting in a role of

an employer seeking to justify his own initial disciplinary decision rather than as a neutral arbitrator.

The AFL-CIO therefore respectfully moves for leave to file the attached brief *amicus curiae*.

Dated: May 31, 2016

Respectfully submitted,

/s/ James B. Coppess
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Harold C. Becker
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Washington, DC 20006
(202) 637-5337

CERTIFICATE OF SERVICE

I, James B. Coppess, certify that on May 31, 2016, the foregoing Unopposed Motion of American Federation of Labor and Congress of Industrial Organizations for Leave to File Brief as *Amicus Curiae* in Support of Appellees' Petitioner for Panel Rehearing or Rehearing En Banc was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit and served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy via first class mail.

/s/ James B. Coppess
James B. Coppess